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[New Hampshire Code of Administrative Rules](#)
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NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-C 500 STATE WATER POLLUTION CONTROL REVOLVING LOAN FUND

PART Env-C 501 PURPOSE AND SCOPE

Env-C 501.01 Purpose and Scope. In accordance with Title VI of the Water Quality Act Amendments, "WQAA", of 1987, and RSA 486:14 of the laws of New Hampshire, a state water pollution control revolving loan fund was created. The purpose of these rules is to set forth the manner and procedures by which revolving loan fund assistance will be made available to and utilized by New Hampshire municipalities and governmental subdivisions to plan, design, and construct water pollution abatement projects.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6697, eff 2-25-98; ss by #6998, eff 5-20-99

PART Env-C 502 DEFINITIONS

Env-C 502.01 "Administration costs" means expenses associated with managing the revolving loan program. Such costs include engineering and environmental review of proposed projects, state overview inspection, accounting, and disbursement function.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.02 "Applicant" means the public entity applying for a loan from the SRF.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.03 "Cadastral survey" means a survey showing boundaries and property lines.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.04 "Capitalization grants" means funds made available to the state by the federal government in accordance with Title VI of the WQAA.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.05 "Categorical Exclusion" ("CE") means a written determination by DES that a proposed project is exempt from the other environmental review processes in accordance with Env-C 509.03(a).

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.06 "Collector sewer" means lateral sewers primarily installed to collect wastewater directly from individual building sewers or private property.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

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Env-C 502.07 "Combined sewer" means a sewer which conveys or serves as a sanitary sewer and a storm sewer.

Source. #4609, eff 5-15-89; ss by #6998, eff 5-20-99

Env-C 502.08 "Commissioner" means the commissioner of the department of environmental services or his designee.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.09 "DES" means the department of environmental services.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.10 "Disbursements" means payments of cash from the SRF to a loan recipient.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.11 "Environmental Assessment" ("EA") means an analysis of, and report on, the potential impact of a proposed project on the local environment and includes an analysis of alternatives and their cost.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.12 "Environmental Impact Statement" ("EIS") means an in-depth investigation of, and report on, the environmental impact of a proposed project when it is determined that significant adverse impacts exist.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.13 "Eligible projects" means those eligible for participation in the SRF in accordance with Env-C 505.01.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.14 "Environmental Protection Agency" ("EPA") means that federal agency empowered under the WQAA to provide funding to states for pollution abatement activities.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.15 "Environmental review" means an analysis of the potential impact of a proposed project on the human and natural environment.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

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Env-C 502.16 "Established market rate" means for each period beginning October 1 and ending the following September 30, the first 11-Bond Index reported for that period in the Bond Buyer published by American Banker, Bond Buyer Division of International Thomson Publishing Corporation, New York City, New York.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.17 "Excusable delay" means a delay in beginning or completing planning, design and/or construction in accordance with an agreed upon schedule which is beyond the recipient's control such as but not limited to, an act of God or war.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.18 "Final project cost" means the amount of the actual project expenditures plus any outstanding interest on the loan accrued during project design, planning, or construction.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.19 "Finding of No Significant Impact" ("FNSI") means a written determination by DES that a proposed project will have no significant adverse impact on the environment in accordance with Env-C 509.03(b).

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.20 "Fiscal year" means that period beginning July 1 and ending the following June 30.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.21 "Interceptor sewer" means a sewer designed to collect wastewater from collector sewers and transport it to a wastewater treatment facility.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.22 "Infiltration/Inflow" ("I/I") means water other than wastewater that enters a sewer system.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.23 "Loan application" means the forms completed by the applicant including a description of the proposed project, estimated project cost, evidence of local approval, and source of loan repayment funds.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

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Env-C 502.24 "Loan fund" means the state water pollution control revolving loan fund as established by RSA 486:14.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.25 "Loan recipient" means the municipality or other entity which receives assistance under the SRF program.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.26 "Loan repayment" means the principal and interest payments on loans by loan recipients which must be credited directly to the SRF.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.27 "Municipality" means a city, town, district association, county, or other public body created under state law, having jurisdiction over disposal of sewage, industrial waste or other wastes.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.28 "National Environmental Policy Act" ("NEPA") means the federal act of 1969, as amended, concerning environmental impact analyses.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.29 "Nonpoint source pollution" means pollution caused by sources that are not regulated as point sources, and normally is associated with agricultural, silvicultural, and urban runoff.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.30 "Original loan agreement" means the initial contract between the state and the SRF loan recipient including a description of the loan amount, the project to be funded, and the terms of loan repayment.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.31 "Planning" means all necessary engineering reports and studies to determine the feasibility of a pollution abatement project.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.32 "Pollution abatement project" means the design, planning or construction of facilities necessary to prevent water pollution caused by point or non-point sources.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

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Env-C 502.33 "Priority list" means a list of projects expected to receive assistance under the SRF program and ranked in accordance with the priority system.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.34 "Priority system" means the process of ranking projects for placement on the priority list for eventual funding under the SRF program.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.35 "Project completion" means the date of substantial completion of the project or the initial scheduled completion date in the loan agreement unless modified per agreement of all parties.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.36 "Septage" means the material removed from septic tanks, cesspools, holding tanks, or other sewage treatment units, excluding sewage sludge from public treatment works and industrial sites.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.37 "Sludge" means the solid or semisolid material produced by wastewater treatment processes.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.38 "SRF" means the state water pollution control revolving loan fund as established by RSA 486:14.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.39 "State" means the state of New Hampshire.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.40 "State treasurer" means the person responsible at the state treasury department for the SRF program.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.41 "Substantial completion" means that date as certified by the engineer when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the contract documents, so that the project or specified part can be utilized for the purposes for which it is intended.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.42 "Supplemental loan agreement" means the amendment to the original loan agreement executed between the state and the SRF loan recipient stipulating the final project cost and the repayment terms.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

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Env-C 502.43 "Wastewater" means the spent water of a community.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.44 "Wastewater treatment facilities" means the arrangement of structures used to collect, transport, and treat wastewater, consisting of, but not limited to, collector sewers, interceptor sewers, pumping stations, force mains, and wastewater treatment plants.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.45 "Wastewater treatment plant" means an arrangement of devices and structures for treating wastewater, including septage and sludge.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.46 "WQAA - Water Quality Act Amendments" means the federal Clean Water Act of 1972 as amended in 1987.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 502.47 "Water Division" ("WD") means that entity of the department of environmental services responsible for the SRF program.

Source. #6998, eff 5-20-99

PART Env-C 503 ESTABLISHMENT OF LOAN FUND

Env-C 503.01 Loan Fund. There shall be established a dedicated state water pollution control revolving loan fund for the purposes of providing low interest loans for the planning, design and construction of pollution abatement projects. Said loan fund shall be administered by the commissioner of DES.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 503.02 Deposits to Fund. The state shall deposit in the SRF the following:

(a) Federal capitalization grants made available under Title VI of the WQAA and as appropriated by the United States Congress;

(b) The state's 20 percent match of the federal capitalization grant as appropriated by the general court. The state 20% match shall be deposited to the SRF on a schedule coinciding with the payment of federal funds into the SRF;

(c) Repayments of principal and interest by SRF loan recipients;

(d) Investment earnings credited to the assets of such fund, which shall become part of the total assets of the fund; and

(e) Any other funds as may be appropriated or available in excess of the state's mandatory 20 percent match as outlined in Env-C 503.02(b).

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Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

PART Env-C 504 PRIORITY FOR PROVIDING LOAN FUNDS

Env-C 504.01 Priority List.

(a) The commissioner shall establish and maintain a priority list of projects eligible to receive loans from the fund.

(b) The priority list shall contain 2 portions as follows:

(1) A fundable portion consisting of those projects ready for construction and anticipated to execute loan agreements from available funds within the coming fiscal year as evidenced by a completed loan pre-application submitted to DES; and

(2) A planning portion consisting of a list of all municipalities that might receive loans from future authorizations of the SRF.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 504.02 Annual Hearing.

(a) The commissioner or his designee shall hold a public hearing annually to present a list of the projects expected to receive disbursement from the fund in the coming fiscal year.

(b) Notice of the hearing shall be published in a newspaper of general circulation at least 7 days prior to the date of the hearing. Notice shall also be sent by first class mail at least 7 days in advance of the hearing to those municipalities whose projects are on the list to be presented and to any person who has submitted a written request for such notice.

(c) Any person desiring to speak at the hearing shall submit a copy of the testimony to be presented to the commissioner no later than 2 days prior to the scheduled date of the hearing. All persons who have submitted written testimony at least 2 days prior to the hearing shall be given priority to speak at the hearing. If sufficient time exists after all persons who submitted testimony have spoken, the commissioner or his designee shall allow other persons to testify at the hearing.

(d) Following the hearing a current year priority list shall be finalized and project assistance granted accordingly. The commissioner shall substitute projects from the planning list for projects on the current list during the course of the fiscal year to ensure timely utilization of funds. Substitutions shall be in accordance with procedures established in the priority system. Projects for which substitutions are made shall be placed on the next year's priority list for funding, whenever possible.

Source. #4609, eff 5-15-89; ss by #5106, eff 3-29-91; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

PART Env-C 505 USE OF SRF

Env-C 505.01 Types of Financial Assistance from the SRF. SRF shall be used to provide loans and other authorized forms of financial assistance as follows:

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(a) To municipalities for planning, design and construction of wastewater treatment facilities, the closure of unlined landfills, and appurtenant facilities directly related to the landfill closure;

(b) Refinancing existing municipal debt obligations for pollution abatement projects where initial debt was incurred after March 7, 1985, for projects which received no federal aid and provided that all applicable state and federal regulations have been complied with. These projects shall receive the lowest priority rating in any given fiscal year;

(c) For implementation of nonpoint source pollution control management program under section 319 of the WQAA; and

(d) For development and implementation of an estuary conservation and management plan under section 320 of the WQAA.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 505.02 Fund Administration. Administration costs of operating the fund shall be withdrawn from the fund to the limits as allowed under Title VI of the WQAA. Amounts withdrawn from the fund for administrative costs shall not exceed 4 percent of the federal funds granted to the state over the lifetime of the fund.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 505.03 Allowable Wastewater Treatment Facilities Construction Costs.

(a) Allowable costs of eligible projects shall consist of all costs directly related to the construction, expansion or upgrading of the following wastewater facilities :

- (1) Wastewater treatment plants with up to a 20 year design life;
- (2) Interceptor sewers with up to 50 year design life;
- (3) Collector sewers in accordance with section 211 of the WQAA, however loans for construction of collector sewers shall only be considered in areas of documented pollution problems due to failed septic systems or direct discharges;
- (4) Wastewater pumping stations.

(b) Other allowable costs for eligible projects include:

- (1) I/I correction;
- (2) Sewer rehabilitation;
- (3) Treatment or abatement of combined sewer overflows;
- (4) Purchase of necessary land used as an integral part of the treatment works or used for ultimate disposal of residues resulting from such treatment such as, but not limited to spray irrigation and land spreading of sludge;

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- (5) Construction engineering, including, but not limited to, resident engineering, operations and maintenance manual preparation, and preparation of record drawings;
- (6) Loan recipient administration costs directly related to construction of the wastewater treatment facilities which are attributable to additional administrative duties outside of normal duty hours;
- (7) Septage disposal and treatment facilities; and
- (8) Interest accrued on the advances from the loan fund for construction.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 505.04 Allowable Planning and Design Costs. Allowable costs of planning and design of eligible projects shall consist of all costs directly related to the planning and design of wastewater treatment facilities as follows:

- (a) Consulting engineering design fees;
- (b) Subsurface investigations and soil borings;
- (c) Environmental or archaeological consultants fees where required;
- (d) Cadastral survey and engineering survey costs;
- (e) Loan recipient administrative costs to obtain approval of the design of the wastewater treatment facilities; and
- (f) Interest accrued on advances from the loan fund.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

PART Env-C 506 LOAN PROCEDURES

Env-C 506.01 Loan Application.

- (a) Applicants for loans from the SRF shall submit a loan application to the commissioner on forms provided by DES.
- (b) Application information and supporting documentation shall consist of the following:
 - (1) Name, address, and phone number of applicant;
 - (2) Brief project description;
 - (3) Estimated total project cost including cost support data;
 - (4) Estimated project construction period;

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- (5) Term of loan requested;
- (6) Amount of loan requested;
- (7) Estimated cash flow requirement;
- (8) Source of loan repayment funds;
- (9) For planning, design and construction loans, an engineering report outlining:
 - a. Need;
 - b. Alternatives evaluation;
 - c. Cost-effective analysis including both capital and operations and maintenance costs; and
 - d. Current facilities plan information;
- (10) A resolution certified and sealed by the town clerk and adopted by the municipality authorizing filing of the application, and indicating persons authorized to sign the resolution on behalf of the community;
- (11) A letter signed by the authorized representative indicating that the application has been submitted to the office of state planning for review through the New Hampshire intergovernmental review process;
- (12) A letter signed by the authorized representative certifying that the applicant has the financial capability to support both the project loan repayment and continuing operation and maintenance;
- (13) Evidence of approval from an appropriate governmental authority to raise, appropriate, and spend the requested loan funds on the proposed project; and
- (14) Documentation on the extent of the applicant's existing debt.

(b) Failure to provide a complete application with adequate supporting documentation as requested by the DES shall result in rejection of the loan request and shall result in a lower project priority ranking on the priority list. The WD shall reconsider the application when the applicant provides the additional supporting documentation requested.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 506.02 Original Loan Agreement

(a) Following acceptance of the application and upon availability of funds, an original loan agreement shall be executed and signed by the commissioner, the state treasurer, and the applicant on a loan agreement provided by the state treasurer.

(b) The forms shall contain or be supported by the following information:

- (1) Estimated loan amount;

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- (2) Interest rate schedule of loan;
- (3) Terms of repayment based on either a 5, 10, 15, or 20 year repayment period as selected by the loan recipient;
- (4) Evidence of town meeting vote or other action authorizing the expenditure and authorizing the municipality to accept the loan;
- (5) Cash flow projection;
- (6) Statement of the municipality designating a representative authorized to sign the loan agreement and apply for periodic loan disbursements;
- (7) Evidence of compliance with applicable federal requirements;
- (8) Legal evidence of guarantee of full faith and credit of the loan recipient or other local governmental entity for repayment of the loan to the SRF;
- (9) Description of the project; and
- (10) Initial scheduled completion date for the project.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 506.03 Governor and Council Approval. The original and supplemental loan agreement shall not become effective unless approved by governor and council.

Source. #4609, eff 5-15-89; ss by #5106, eff 3-29-91; ss by #5642, eff 6-23-93 (from Env-C 506.05); ss by #6998, eff 5-20-99

Env-C 506.04 Contracts.

(a) Pursuant to RSA 485-A: 4, IX, contract documents shall be submitted for review and approval in accordance with Env-Ws 700.

(b) No construction project shall be offered for public bid until such approval is granted by DES.

(c) For all projects funded by the SRF program, whether for construction, planning, or design, a contract for professional services shall:

- (1) Be executed between the loan recipient and the engineering consultant;
- (2) Be approved by DES;
- (3) Be on forms provided by DES; and
- (4) Contain or be supported by the following information supplied by the engineer :
 - a. Services to be performed by the engineering consultant;

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- b. The loan recipient's responsibilities;
- c. The estimated time of completion of the project;
- d. Compensation to be paid to the engineering consultant;
- e. Additional contract provisions including the name of the project engineer;
- f. Termination provisions; and
- g. Authorized signatures of the engineer, the loan recipient, and DES.

(d) For all construction projects funded by the SRF program, and following receipt of bids and review and approval by DES, a construction contract shall be executed between the loan recipient and the contractor on forms provided by the engineering firm.

(e) DES shall review all bids for construction and shall approve the loan recipient's acceptance of the lowest competitive bid responsive to the contract documents, plus a 5 percent contingency, and related engineering and administrative costs as indicated in Env-C 505.03.

(f) Any increases in project cost or scope shall not be allowable unless the prior approval of DES was obtained through a written request to the DES explaining the extent of the increased costs and/or scope and reasons for the adjustments. Upon receipt of a request for approval of an increase in cost and/or scope.

(g) DES shall approve a request made pursuant to (e) above if the following criteria are met:

- (1) The increased cost or scope was not reasonably foreseeable at the time the original project proposal was submitted;
- (2) The cost increase results in a total cost no greater than the prevailing rate for the item to which the cost is attributable such as, but not limited to labor and materials;
- (3) The item to which the cost increase is attributable is an eligible cost as specified in Env-C 505; and
- (4) The fund has sufficient monies available at the time the request is filed to cover the proposed cost increase.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93 (from Env-C 506.03); ss by #6998, eff 5-20-99

Env-C 506.05 Use of Funds. Loan recipients shall begin expenditure of funds for their designated purpose within 6 months of execution of loan agreement. Failure to comply shall void the loan agreement.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93 (from Env-C 506.04); ss by #6998, eff 5-20-99

Env-C 506.06 Loan Disbursements. Disbursements shall be made by the state to loan recipients for eligible costs as specified in Env-C 505 on a periodic basis as requested by the loan recipients. Eligible costs shall include acceptable eligible work in place, eligible engineering services rendered, and eligible equipment

delivered and properly stored on the job site. In order to request a disbursement, paid invoices shall be presented by the loan recipients. Requests shall not be made more frequently than monthly.

Source. #4609, eff 5-15-89; ss by #5106, eff 3-29-91; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 506.07 Supplemental Loan Agreement.

(a) Upon completion of the project, the original loan agreement shall be amended to reflect the actual project expenditures. A supplemental loan agreement shall be executed between the commissioner, the state treasurer, and the loan recipient on forms provided by the state treasurer.

(b) The supplemental loan agreement shall contain the following information:

- (1) The loan interest rate selected by the loan recipient based on the established market rate at the time that the supplemental loan agreement is prepared; and
- (2) The loan repayment schedule based on the final project cost.

Source. #4609, eff 5-15-89; ss by #5106, eff 3-29-91; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 506.08 Loan Repayment.

(a) Loans shall be repaid to the state treasurer as stipulated in the supplemental loan agreement but shall not exceed a 20 year repayment period.

(b) Repayments shall begin one year following the date of substantial completion of the project but in no case later than one year following the initial scheduled completion date established in the original loan agreement unless modified per agreement of all parties.

(c) Should excusable delay as defined in Env-C 502.16 be incurred beyond scheduled completion, the applicant may request the commissioner modify the original loan agreement to account for the delays.

(d) Any modification of the original loan agreement shall be negotiated with and approved by the loan recipient, the commissioner, and the state treasurer prior to any formal modification of the agreement.

(e) Loans may be repaid prior to the date stipulated in the supplemental loan agreement with no prepayment penalty.

Source. #5642, eff 6-23-93 (from Env-C 506.07); ss by #6998, eff 5-20-99

Env-C 506.09 Loan Amortization.

(a) Loan repayment shall be made according to a fixed amortization schedule based on:

- (1) The final project cost;
- (2) The repayment period selected by the loan recipient of 5, 10, 15, or 20 years; and
- (3) The established interest rate at the time the supplemental loan agreement is executed.

(b) Loan amortization shall be made on a semi-annual or annual basis with either level debt service, or level payments of principal plus interest according to RSA 33:2, at the option of the loan recipient over the selected repayment period of 5, 10, 15, or 20 years.

Source. #5642, eff 6-23-93; ss by #6998, eff 5-20-99

PART Env-C 507 LOAN INTEREST RATES

Env-C 507.01 Establishing Rates.

(a) Interest on any loan funds disbursed shall begin to accrue as of the date of each disbursement of such funds by the state.

(b) The interest accrued shall be at the rates specified in this part.

(c) Interest on funds disbursed to a municipality prior to the date of substantial completion or the date of scheduled completion, whichever is earliest, shall accrue at the rate of one percent per year up to the date of substantial completion or scheduled completion whichever is earliest.

(d) Interest on funds disbursed to a private party shall accrue at the loan interest charge from the date of disbursement.

(e) At the option of the loan recipient, interest charges on disbursed funds shall be paid:

- (1) Semi-annually;
- (2) Prior to the commencement of loan repayment;
- (3) At the time of the first repayment; or
- (4) Added to the loan balance.

(f) Interest charges during loan repayment shall be fixed over the loan repayment period and shall be established at the time of the execution of the supplemental loan agreement based on the established market rate and the loan repayment period selected by the loan recipient.

(g) Unless covered by (h) below, loan interest charges during repayment shall be:

- (1) 25 percent of the established market rate minus one percent when a 5 year repayment period is selected;
- (2) 50 percent of the established market rate minus one percent when a 10 year repayment period is selected;
- (3) 75 percent of the established market rate minus one percent when a 15 year repayment period is selected; and
- (4) 80 percent of the established market rate minus one percent when a 20 year repayment period is selected.

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(h) Loan interest charges paid by private parties for rehabilitation of nonpoint source pollution problems shall be 25 percent of the established market rate minus one percent.

(i) In addition to the interest charges established in (g) or (h) above, an annual administrative fee in the amount of one percent of the unpaid principal balance shall be charged on all outstanding loans during the loan repayment period.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; amd by #6302, INTERIM, eff 8-14-96, EXPIRED 12-12-96; amd by #6461, eff 2-21-9793; ss by #6998, eff 5-20-99; ss by #7390, eff 10-28-00

Env-C 507.02 Adjustment. The interest rate stipulated in the original loan agreement shall be adjusted one time at the completion of the project prior to setting the final repayment schedule as outlined in the supplemental loan agreement. The rate shall be adjusted downward from the initial rate based on the established rate being charged on the execution date of supplemental agreement. The loan interest rate shall not be adjusted upward from the rate stipulated in the original loan agreement.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

PART Env-C 508 RECIPIENT RESPONSIBILITIES

Env-C 508.01 Assurances. Prior to receipt of loans for construction from funds made available directly by federal capitalization grants, loan recipients shall provide evidence of the following:

- (a) Approved project plans and specifications;
- (b) Agreement to develop user charge system and sewer use ordinances prior to 80% of construction completion in accordance with 40 CFR Part 35;
- (c) Compliance with best practicable waste treatment technology;
- (d) That alternative technologies were considered in project design;
- (e) Evidence that the sewer collection system is not subject to excessive I/I in accordance with 40 CFR Part 35;
- (f) That innovative and alternative treatment technologies were considered during design;
- (g) That potential recreation and open space opportunities were considered;
- (h) Compliance with Minority Business Enterprise and Womens Business Enterprise Requirements, 40 CFR Part 31;
- (i) Agreement to maintain project financial accounts in accordance with generally accepted accounting principals (GAAP) and that these accounts shall be maintained as separate accounts;
- (j) Agreement to conduct a financial audit in accordance with GAAP in any fiscal year that loan funds of \$360,000 or greater are disbursed by the recipient;

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(k) A letter signed by the authorized representative certifying that the local authorities who will be implementing the project have the necessary legal, financial, institutional and managerial resources available to insure the construction, operation, and maintenance of the proposed wastewater treatment facilities;

(l) Agreement to provide notice of initiation of operation to DES upon beginning operation of the project; and

(m) Completion of value engineering for projects greater than \$10 million in construction cost.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 508.02 Certification. The loan recipient shall certify in a letter to the DES that any facility constructed from funds made available through the SRF meets design specifications and, if a wastewater treatment facility, meets effluent limitations included in its permit one year after the initiation of operation.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 508.03 Inspection. Loan recipients shall contract for or otherwise provide for on site inspection of the construction. The extent of inspection shall be agreed upon by the loan recipient and the commissioner and stipulated in the contract for professional services. The recipient shall also make provision for periodic inspection by WD personnel.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

PART Env-C 509 ENVIRONMENTAL REVIEW

Env-C 509.01 Environmental Review. Construction projects for which loans from the SRF are requested shall be reviewed for impacts on the human and natural environment in accordance with Env-C 509.02 through Env-C 509.05.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 509.02 General Procedure.

(a) The WD shall be designated as the lead entity for coordinating the environmental review process and shall prepare an environmental review report based on the applicant's facility plan or engineering report, as updated to describe the proposed project.

(b) The environmental review shall result in one of the following actions:

- (1) Categorical exclusion, (CE);
- (2) Finding of No Significant Impact, (FNSI); or
- (3) Environmental Impact Statement, (EIS).

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Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 509.03 Details of Review.

(a) The WD shall provide environmental project review resulting in one of the following determinations:

(1) CE, based on the following:

a. The WD shall prepare a review document describing the basis for a CE determination when the scope of the project is consistent with the following:

1. Minor work on existing facilities as determined by the WD, such as correction of infiltration and inflow; replacement of equipment; and addition of small new structures on site; or
2. Minor upgrading in small communities where no increase or expansion is planned.

b. The review document shall be forwarded to interested agencies and provided to the public for review in accordance with Env-C 509.04;

c. If no significant adverse comments are received, a CE shall be issued by the commissioner as the final action and transmitted to the applicant; and

d. If significant adverse comments are received, an environmental assessment shall be conducted;

(2) Finding of No Significant Impact, based on the following:

a. For projects not receiving a CE determination, the WD shall prepare an EA:

b. The EA shall be developed to describe the following:

1. Project purpose and need;
2. Environmental concerns;
3. Alternatives, including the no action alternative;
4. Cost information;
5. Details of the recommended alternative; and
6. Mitigation measures required for the recommended alternative, if applicable;

c. Information relating to the EA shall be forwarded to interested agencies as provided in Env-C 509.04(a);

d. The applicant shall provide the EA to the public for review in accordance with Env-C 509.04(c);

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- e. If no significant adverse comments are received, a FNSI shall be issued by the commissioner as the final action and transmitted to the applicant;
- f. If significant adverse comments are received, the applicant shall convene a public information meeting in accordance with RSA 91-A;
- g. Within 60 days of the public information meeting, the commissioner and staff shall assess the information received at the meeting;
- h. The commissioner shall invoke one of the following options:
 - 1. If the commissioner finds that the comments received do not indicate that the proposed project will actually have a significant adverse impact on the environment, then the commissioner shall issue the FNSI;
 - 2. If the commissioner finds that the project will have a significant adverse impact on the environment that could be lessened or eliminated by implementing an alternative proposal, the commissioner shall order the applicant to re-review the proposed project to identify an alternative with less environmental impact;
 - 3. If the commissioner finds that the project will have a significant adverse impact on the environment that could be lessened or eliminated by modifying the project as proposed to incorporate mitigating procedures, the commissioner shall require mitigating procedures to be implemented as a condition of receiving a loan from the SRF; or
 - 4. If the commissioner finds that the project will have a significant adverse impact on the environment that cannot be lessened or eliminated by implementing an alternative proposal or by incorporating mitigating procedures, the commissioner shall direct the applicant to initiate an EIS in accordance with 40 CFR Part 6. In connection with this directive, the commissioner shall require the applicant to use a private consultant to conduct the EIS if the commissioner finds that the applicant does not possess the requisite technical resources to conduct the EIS without the aid of a private consultant; and

(3) EIS based on the following:

- a. For projects not receiving a CE determination or a FNSI determination the WD shall require the preparation of an EIS in accordance with 40 CFR Part 6

Source. #4609, eff 5-15-89; amd by #5106, eff 3-29-91; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 509.04 Review and Comment by Agencies, Associations and the Public. Following the environmental review, the recommended action by WD shall be reviewed and documented as follows:

- (a) Agency involvement shall include other statewide agencies and associations as well as federal agencies as appropriate;

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(b) WD shall maintain complete files and documentation of the environmental review process and public comments; and

(c) Public participation shall be in accordance with the following:

(1) Public input shall be solicited by the applicant on all construction projects for which SRF loans are requested. At least one public meeting in accordance with RSA 91-A shall be required during the project planning stage or prior to signing of the original loan agreement;

(2) The public shall be notified by the applicant and input solicited through advertisement in a local and statewide newspaper. Comments shall be submitted to the applicant or WD within 30 days from the date of publication; and

(3) No formal action shall be taken during this public review period.

Source. #4609, eff 5-15-89; ss by #5642, eff 6-23-93; ss by #6998, eff 5-20-99

Env-C 509.05 Appeal. Any person or organization aggrieved by a decision of the DES regarding the issuance of a CE, FNSI or an EIS may appeal in writing to the commissioner within 30 days. The commissioner shall convene a hearing in accordance with RSA 541-A and Env-C 200 to hear such appeal and render a final decision.

Source. #5642, eff 6-23-93 (from Env-C 509.04); ss by #6998, eff 5-20-99

PART Env-C 510 PURPOSE AND SCOPE OF STATE DRINKING WATER REVOLVING LOAN FUND PROGRAM

Env-C 510.01 Purpose and Scope.

(a) The intent of this program described as Env-C 510 through Env-C 522 is to provide community, and non-profit non-community water systems with financial assistance to protect public health, restore compliance with the state and federal Safe Drinking Water Acts and provide long term protection of the sources of public drinking water. The purpose of these rules is to set forth the manner and procedures for the utilization of this fund.

(b) The principal purpose of both the SRF project and the operable water system shall be for the treatment and delivery of drinking water that meets the requirements of the Safe Drinking Water Act for the jurisdiction, community, region, or the district concerned.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98; ss by #6697, eff 2-25-98

PART Env-C 511 DEFINITIONS AND ABBREVIATIONS

Env-C 511.01 Definitions.

(a) "Act" means the federal Safe Drinking Water Act including amendments under the Safe Drinking Water Act of 1996.

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(b) "Administration costs" means expenses associated with managing the revolving loan program. Such costs include those state costs for engineering and environmental review of proposed projects, state oversight, accounting, and disbursement functions.

(c) "Allotment" means funds that are available for obligation each fiscal year.

(d) "Applicant" means the entity applying or having applied for a loan from the DWSRF.

(e) "Application" means the written document(s), with attachments, through which a loan is requested.

(f) "Appropriation" means the incurring of obligations and making of payments for specific purposes, based on statutory authority.

(g) "Architectural services" means consultation, investigations, reports, or services for design projects within the scope of the practice of architecture.

(h) "Authorization" means legislation which allows the appropriation of funds to implement program activities.

(i) "Best available technology (BAT)" means "best available technology" as defined in Env-Ws 302.02, namely "the best technology, treatment techniques, or other means which the division finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available, taking cost into consideration. For the purposes of setting MCLs for synthetic organic chemicals, any BAT shall be at least as effective as granular activated carbon."

(j) "Binding commitment" means legal obligations by the state to the local recipient that define the terms and the timing for assistance under the DWSRF.

(k) "Bypass procedure" means the process used to skip over a system on the priority list that is not ready to proceed with a project.

(l) "Building" means the erection, acquisition, alteration, remodeling, improvement or extension of a drinking water system.

(m) "Capitalization grant" means funds made available to the state by the federal government in accordance with section 1452(a) of the Safe Drinking Water Act Amendments of 1996.

(n) "Construction" means:

- (1) Preliminary planning to determine the feasibility of drinking water systems;
- (2) Engineering, architectural, legal, fiscal, or economic investigations or studies;
- (3) Surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions;
- (4) Erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works; or
- (5) The inspection or supervision of any of the foregoing items.

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(o) "Contingency sections" means the portions of the priority lists consisting of projects which might receive loans due to a bypass provision or due to additional funds becoming available.

(p) "Council" means the water council of the state of New Hampshire, established pursuant to RSA 21-O:7.

(q) "Cross-cutting laws and orders" means federal laws and authorities that apply to all activities supported with funds directly made available by capitalization grants.

(r) "Commissioner" means the commissioner of the department of environmental services or his designee.

(s) "Department" means the New Hampshire department of environmental services.

(t) "Disbursements" means transfers of cash from the DWSRF to a loan recipient.

(u) "Drinking water project" means either:

(1) An infrastructure project, including a project to control, improve, or develop a drinking water supply, treatment, storage and distribution; or

(2) A source water protection project including the development and implementation of a source water protection program, a construction project that is preventative and source water protection-related and a land acquisition project within a source water protection area.

(v) "Eligible entity" means an entity determined by the department to be qualified to obtain financial assistance from the department for the financing of an approved project.

(w) "Enforceable requirements of the act" means those conditions or limitations which when violated, could result in the issuance of a compliance order or initiation of a civil or criminal action.

(x) "Engineering services" means consultation, investigations, reports, or services for design projects within the scope of professional engineering.

(y) "Established market rate" means for each period beginning October 1 and ending the following September 30, the first 11-Bond Index reported for that period in the Bond Buyer published by American Banker, Bond Buyer Division of International Thomson Publishing Corporation, New York City, New York.

(z) "Excusable delay" means a delay in beginning or completing of planning, design, construction, or implementation in accordance with an agreed-upon schedule which is beyond the recipient's control, such as but not limited to, an act of God or war.

(aa) "Financial assistance" means the act, process, or program of the department in loaning, granting of, or contracting for funds to an applicant for the financing of a department- approved project.

(ab) "Fundable portions" means that portions of the project priority lists which includes projects scheduled for financial assistance during the funding year.

(ac) "Funding year" means the first year of the planning period represented by a project on the priority list.

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- (ad) "Fund" means the state revolving loan fund as established by RSA 486:14.
- (ae) "Initiation of operation" means the date specified by the recipient on which the drinking water project begins for the purposes for which it was planned, designed, and built.
- (af) "Infrastructure project" means the scope of work for which DWSRF assistance is provided and can include such items as planning, design, constructing, or distribution of an operable water system.
- (ag) "Intended use plan (IUP)" means a document prepared each year by the department, which identifies the intended uses of the funds in the DWSRF and describes how those uses support the goals of the DWSRF.
- (ah) "Land acquisition" means the purchase of land for infrastructure projects or protective easements within the source water protection area and includes typically associated services such as appraisal and title search.
- (ai) "Loan" means the original agreement between the department and the local recipient through which the DWSRF provides department funds for eligible assistance and the recipient promises to repay the principal sum to the DWSRF over a period not to exceed 20 years at an interest rate established at or below market rate and which may be interest free.
- (aj) "MBE/WBE participation" means the federal requirement for negotiation of a "fair share" objective for minority-owned and women-owned businesses (MBE/WBE) and applies to assistance in an amount equal to the capitalization grant.
- (ak) "Maintenance" means preservation of functional integrity and efficiency of equipment and structures. The term includes preventive maintenance, corrective maintenance, and replacement of equipment.
- (al) "Maximum contaminant level (MCL)" means "maximum contaminant level" as defined in RSA 485:1-a, VII; namely, "the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from the definition."
- (am) "Municipality" means a city, town, county, district, association, or other public body, including an intermunicipal agency of 2 or more of the foregoing entities, created under state law, with jurisdiction over a public water system.
- (an) "Operation and maintenance" means activities required to assure the safe, dependable, and economical function of water systems.
- (ao) "Operation" means control of the processes and equipment which make up the drinking water system. The term includes financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.
- (ap) "Payments" means action by EPA to increase the amount of funds available for cash draw in a letter of credit.

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(aq) "Planning" means the process of evaluating alternative solutions to drinking water system problems, and through a systematic screening procedure, the selection of the most cost- effective alternative.

(ar) "Planning portion" means that part of the project priority lists containing all projects outside the fundable portion of the list that might, under anticipated allotment levels, receive funding during the 5-year planning period represented by the list.

(as) "Pledge" means the act or process through which an applicant commits, obligates and encumbers its real or personal property, or its existing or anticipated revenues to the department as security and means for repayment of the loan made to the applicant by the department.

(at) "Project " means a drinking water project.

(au) "Project cost" means the applicant's direct and incidental cost of acquiring, constructing, implementing, and furnishing the project for which assistance is sought.

(av) "Project completion" means the scheduled completion date associated with the scheduled loan agreement.

(aw) "Project priority lists" means the 2 prioritized lists of projects, one pertaining to infrastructure and the other pertaining to source water protection, for which DWSRF assistance is expected and authorized in current and subsequent years.

(ax) "Project priority points" means the total number of points assigned to a project by using the appropriate priority ranking formula.

(ay) "Reallotment" means the assignment of previously- allotted, unused funds.

(az) "Recipient" means a municipality or other entity which receives assistance under the DWSRF program.

(ba) "Repayment" means the recompense of principal, interest, and administrative fee amounts on loans.

(bb) "Replacement" means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the drinking water system, to maintain its capacity and performance as originally designed and constructed.

(bc) "Revenue program" means a formally-documented schedule of water use charges which is designed to provide revenues for operation and maintenance, including upgrade replacement cost, and/or any combination of revenue-generating programs necessary to meet debt service requirements.

(bd) "Secondary maximum contaminant level (SMCL)", means "secondary maximum contaminant level" as defined in Env-Ws 302.02 namely, "The secondary maximum contaminant levels which apply to public water systems and which, in the judgment of the division, are requisite to protect public welfare. The SMCLs means the maximum permissible level of contaminant in water which is delivered to the free flowing outlet of the ultimate user of the public water system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition."

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(be) "Security" means an applicant's real or personal property that is pledged, committed, and encumbered by the applicant to the department to ensure repayment to the department.

(bf) "Source water protection" means protection of the source of drinking water by delineating the area to be protected, identifying land uses which may threaten its use for water supply, managing or eliminating identified threats, and contingency planning.

(bg) "Source water protection area" means an area which contributes water to a well or surface water intake, including a wellhead source water protection project for a groundwater source and/or a watershed for a surface water source.

(bh) "Source water protection project" means a project which addresses one or more components of source water protection, including development and implementation of a source water protection program, a construction project that is preventative, and a source water protection- related land acquisition within a source water protection area.

(bi) "State" means the state of New Hampshire.

(bj) "State match" means the amount of funds equaling at least 20 percent of the amount of the capitalization grant which the state shall deposit into the DWSRF.

(bk) "Supplemental loan agreement" means an amendment to the original loan agreement executed between the state and the DWSRF loan recipient stipulating the final project cost and repayment terms.

(bl) "User charge" means a charge levied on users of a water supply for the user's share of the cost of operation and maintenance, including replacement, of such works.

(bm) "Water system" means any devices and systems used in the storage, treatment, and distribution of drinking water.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 511.02 Abbreviations.

- (a) "BFA" means Business Finance Authority;
- (b) "BAT" means best available technology;
- (c) "DWSRF" means drinking water state revolving fund;
- (d) "EA" means environmental assessment;
- (e) "EIS" means environmental impact statement;
- (f) "FNSI" means finding of no significant impact;
- (g) "IUP" means intended use plan;
- (h) "MCL" means maximum contaminant level;
- (i) "MGD" means millions of gallons per day;

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- (j) “SRF” means state revolving loan fund; and
- (k) “SMCL” means secondary maximum contaminant level; and
- (l) “SWP” means source water protection.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

PART Env-C 512 ESTABLISHMENT OF LOAN FUND

Env-C 512.01 Loan Fund. There shall be established a dedicated state public drinking water revolving loan fund for the purposes of providing low interest loans for the planning, design and construction of drinking water infrastructure and source water protection projects. Said loan fund shall be administered by the commissioner of the department.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 512.02 Deposits to Fund. Pursuant to RSA 486:14, the state shall deposit in the DWSRF the following:

- (a) Federal capitalization grants made available under Section 1452(B) of the 1996 SDWA Amendments and as appropriated by the United States Congress;
- (b) The state's 20 percent match of the federal capitalization grant as appropriated by the general court. The state 20 percent match shall be deposited to the DWSRF on a schedule coinciding with the payment of federal funds into the DWSRF;
- (c) Repayments of principal and interest by DWSRF loan recipients;
- (d) Investment earnings credited to the assets of such fund, which shall become part of the total assets of the fund; and
- (e) Any other funds as may be appropriated or available in excess of the state's mandatory 20 percent match as outlined in Env-C 512.02(b).

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

PART Env-C 513 GENERAL PROGRAM REQUIREMENTS

Env-C 513.01 Eligible Project Categories and Fundable Construction Costs.

- (a) Categories of drinking water projects eligible for assistance shall be as follows:
 - (1) Infrastructure projects including:
 - a. Treatment;
 - b. Distribution/storage facility structural rehabilitation;

- c. Transmission/distribution systems;
 - d. Source development; and
 - e. Storage facilities.
- (2) SWP projects including:
 - a. Development of one or more components of a SWP project ;
 - b. Implementation of one or more components of a SWP;
 - c. SWP-related preventative construction projects; and
 - d. Acquisition of land for a SWP project in SWP areas.
- (b) Eligible construction costs shall be based on the lowest bidder or competitive quotation.
- (c) In order to be eligible for funding, categories listed in (a)(1), above, shall comply with the following:
 - (1) Applicable federal requirements;
 - (2) Applicable state design criteria in accordance with Env-Ws 300-386;
 - (3) Eligible design capacity, which shall be determined in accordance with the following:
 - a. The eligible design capacity shall be determined using average daily flow and peak flows in accordance with population and per capita flow estimates provided by the applicant;
 - b. Eligible design capacity for treatment plants shall be up to a period of 20 years from the estimated date of initiation of operation;
 - c. Eligible design capacity for water distribution mains and intake or raw water mains, shall be up to 40 years from the estimated date of initiation of operation; and
 - d. Eligible design capacity shall be calculated by multiplying the department approved local population projection by an appropriate local per capita flow figure and industrial needs where applicable. The flow thus calculated shall be deemed to include all the eligible project flows.
 - (4) Distribution systems shall consist of the common lines, within a public water system, which are installed to distribute water directly from source or treatment facilities;
 - (5) Documentation of the local projections for population and flow shall be included in the planning document; and
 - (6) Land acquisition costs shall be ineligible, except land acquisition that is needed to locate the eligible project, which shall be calculated as what a willing seller accepts at fair market value as determined by a certified appraisal.
- (d) In order to be eligible for funding, categories listed in (a)(2), above, shall comply with the following:

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- (1) Applicable federal requirements;
- (2) Projects shall occur within or be focused on SWP areas approved by the department;
- (3) SWP-related land acquisition shall be from a willing seller. Eligible costs shall be what a willing seller accepts at fair market value as determined by a certified appraisal; and
- (4) Easements shall not restrict activities unrelated to water supply protection.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 513.02 Revenue Program.

(a) The applicant shall submit in writing, verification that the applicant has legal, managerial, and financial capability to construct, operate, and maintain the water system.

(b) The applicant shall be required to establish:

(1) A user charge system which shall generate sufficient revenues for the operation and maintenance, including reasonable replacement cost; and

(2) A dedicated source or sources of revenue to repay the loan.

(c) The applicant shall be required to demonstrate, at the time of the actual application, that a dedicated source of revenue is available to repay the loan. Revenue shall be considered dedicated when the recipient passes an ordinance or a resolution committing a source or sources of funds for repayment. The resolution or ordinance dedicating a source of funding for repayment of the loan shall be adopted before finalization of the loan agreement.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 513.03 DWSRF Project Priority System.

(a) The department shall prepare and maintain two DWSRF project priority lists of eligible projects in the order of priority, one for infrastructure projects and the other for SWP projects.

(b) Projects included in the project priority lists shall be as follows:

(1) The fundable portions shall include projects scheduled for financial assistance during the current fiscal year, and which are within the limits of currently available funds; and

(2) The planning portions shall include that portion of each priority list containing all of those projects outside the fundable portion of the list, which are anticipated to receive financial assistance in future fiscal years. The planning portion shall also include contingency projects which are scheduled for assistance during the current fiscal year, but for which adequate funds are not available to provide financial assistance. Projects designated as contingency projects shall receive DWSRF assistance if funding becomes available due to bypass provisions or due to additional funds.

(c) The department shall hold a public hearing to receive comments on the proposed DWSRF project priority lists and present any revisions that were made to the DWSRF project priority ranking system. The department shall publish a notice of public hearing at least 30 days prior to the date of the hearing in a newspaper of statewide distribution. At this hearing, the department shall have information available about the project priority lists including a description of each proposed project.

(d) The DWSRF project priority lists shall become effective and supersede all previous lists upon the first day of the federal fiscal year for which it is designated. The DWSRF project priority lists, as updated during the fiscal year, shall remain effective until such time as they are superseded by new lists.

(e) The ranking factors for infrastructure projects and SWP projects shall be as follows:

- (1) The relative impact of the project in achieving the compliance objectives of the Act;
- (2) Furthering public health protection; and
- (3) Affordability for the water user.

(f) Management of the project priority lists shall be as follows:

- (1) A tie-breaking procedure shall be utilized when 2 or more projects on one of the lists have equal points under the project priority system and are in competition for funds. The tie breaker shall be based on the population served. The project with the greatest existing population served shall receive the higher ranking;
- (2) A project on the fundable portion of either list shall be bypassed if it is determined that the project will not be ready to proceed during the funding year. Projects that have been bypassed shall be reinstated on the funded portion of the appropriate list if sufficient funds are available, and the project is ready to proceed. Funds which become available due to the utilization of these bypass procedures shall be treated in the same manner as additional allotments;
- (3) The project priority lists shall be continually reviewed and updated with changes as necessary. Examples of these changes include loan award dates, estimated construction assistance amounts, project bypass, and addition of new projects;
- (4) After defining the fundable portion of each of the DWSRF project priority lists, the department shall determine whether it is necessary or desirable to obligate additional available funds. Either list shall be extended to include the next highest ranked project(s) on the contingency section of the planning portion of the list. Any sum made available to a state by reallocation or the release of funds that were previously obligated shall be treated in the same manner as the most recent allotment;
- (5) The department shall remove a project from either of the DWSRF project priority lists when:
 - a. The project has been funded;
 - b. The project is found to be ineligible;
 - c. The applicant does not intend to continue in the DWSRF; or
 - d. The applicant does not have financial capability to construct/implement the project;

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- (6) The department shall determine the amount of financial assistance by computing the sum of the total eligible cost, contingent upon the availability of funds for this project;
- (7) Prior to the addition of any new projects on either of the DWSRF project priority lists, the applicant shall submit an application to the department. The request shall specify that the applicant intends to apply for financial assistance from the DWSRF. The department shall evaluate the request, and if it is indicated that a project could result which would be in conformance with DWSRF requirements, the potential project shall be added to the appropriate DWSRF priority list;
- (8) A change of project scope, such as the addition of new construction items, shall not be eligible after loan closing unless one of the following conditions are met:
 - a. The change of scope is necessary due to an oversight , and is needed for in an operable water system and not to replace faulty construction or equipment already funded; or
 - b. The change of scope is necessary due to changes in federal or state requirements; and
- (9) Loan assistance may contain a contingency equivalent to 10 percent of the estimated project cost.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 513.04 Intended Use Plan.

(a) Each fiscal year, after Congress appropriates and the state receives its allocation of funds for the DWSRF, the department shall prepare an IUP which shall be reviewed through a public hearing. The IUP shall identify projects anticipated to receive financial assistance from that year's appropriation. The IUP shall comply with federal Safe Drinking Water Act DWSRF guidance.

(b) The IUP shall include the following items:

- (1) A description of both the short-term and long-term goals and objectives of the fund;
- (2) The list of infrastructure projects included on the priority list, including the following items:
 - a. Name of the recipient;
 - b. Facility name and description;
 - c. Project treatment/use categories;
 - d. Treatment requirements;
 - e. Terms of financial assistance; and
 - f. Type of assistance;
- (3) The list of SWP projects included on the priority list, including the following items:

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- a. Name of the recipient;
- b. Facility description;
- c. Terms of financial assistance; and
- d. Type of assistance;

(4) The list of activities involving infrastructure projects and source water protection projects which are eligible for assistance;

(5) Assurances for meeting the requirements of Section 1452 of the Act, which shall include binding commitments by the department, which in the aggregate, are equal to 120 percent of that fiscal year's federal capitalization grant allocations, within one year after the receipt of the grant payment; and

(6) A payment and disbursement schedule.

(c) The department shall include in the IUP the criteria and method that are established for distribution of funds as follows:

(1) The department shall prepare a preliminary IUP prior to October 1st of each year. The applicants considered for funding shall be those legal entities that have indicated to the department that they desire to receive assistance within the next fiscal year. The preliminary IUP shall be subject to public comments and review before being submitted to EPA;

(2) Each project to be included in the IUP shall be ranked according to priority points and shall be rated under the priority rating process as specified in this part;

(3) Projects shall be ranked as follows:

- a. Each project shall be ranked according to the appropriate priority ranking system; and
- b. Projects which are to be refinanced shall be rated on facility conditions which existed prior to start of construction on their water system as well as highest water rates; and

(4) The apportionment of funds shall be as follows:

- a. Projects within the range of available funds shall be eligible to receive financial assistance. Other projects shall be eligible for financial assistance at such time funds become available; and
- b. Applicants designated to receive financial assistance shall submit an approvable application.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 513.05 Reserved.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
rsvd by #6697, eff 2-25-98

Env-C 513.06 Types of Assistance.

- (a) The fund shall be used to make loans on the condition that:
 - (1) Such loans shall be made at or below market interest rates at terms not to exceed 20 years;
 - (2) Principal and interest payments shall commence not later than one year after project completion and all loans shall be fully repaid not later than 20 years after the first payment; and
 - (3) The recipient of a loan shall establish a dedicated source of revenue for repayment of loans.
- (b) The fund shall be eligible to buy or refinance the debt obligation of eligible applicants within the state, at or below market rates, when such debt obligations were incurred and construction started after July 1, 1993.
- (c) The fund shall be eligible to guarantee or purchase insurance for the applicant's local debt.
- (d) The fund shall be eligible as a source of revenue or security for payment of DWSRF debt obligation.
- (e) The fund shall be eligible to earn interest on fund accounts.
- (f) The DWSRF may be used for the purposes listed in (a) through (d), above provided that the following conditions are met:
 - (1) The applicant is the approved legal management agency;
 - (2) The project is included on the state inventory of public water supplies;
 - (3) The project is listed on either of the project priority lists;
 - (4) The project has complied with requirements of these regulations and has been approved by the department; and
 - (5) For infrastructure and SWP related construction projects, the project has approved plans and specifications and a construction approval issued by the department.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 513.07 Pre-application for Funding.

- (a) The applicant shall complete and submit to the department, the pre-application form for funding, including the following:
 - (1) Name of public water system;
 - (2) EPA #;

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- (3) Ownership type;
- (4) Mailing address;
- (5) Contact person;
- (6) Telephone number;
- (7) Description of the proposed project;
- (8) Description of the need for the proposed project and public health compliance;
- (9) Estimate of the construction costs to include;
 - a. A construction contingency of 10%;
 - b. Estimated engineering costs;
 - c. Estimated land acquisition costs; and
 - d. Total estimated cost;
- (10) Anticipated project start date;
- (11) Signature and title of the applicant's representative; and
- (12) The date that the pre-application form was completed by the applicant.

(b) The department shall make a determination of eligibility of project(s) in accordance with Env-C 513.01 for approval or rejection of the loan pre-application.

(c) If the department determines the project is eligible, the department shall notify the applicant.

(d) If the department determines the project is ineligible, the department shall provide a written response which includes the reasons for ineligibility. The applicant shall then be allowed to modify or supplement any documents in order to comply with department requirements and resubmit the same to the department.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

PART Env-C 514 PLANNING REQUIREMENTS FOR INFRASTRUCTURE PROJECTS

Env-C 514.01 Pre-planning Conference. If requested by an applicant, the department shall hold a preplanning conference concerning the project or application process. The purpose of the conference shall be to provide information, advice, instruction, guidance, and other information the applicant may require on the scope of work and level of effort needed to define eligible projects.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

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Env-C 514.02 Planning Document.

(a) The purpose of the planning document is to allow the review of the alternatives from the viewpoints of function, operation, economics, reliability, safety, efficiency, cost-effectiveness, and environmental compatibility.

(b) A planning document shall be submitted to the department by the applicant, which shall include, but not be limited to the following information:

- (1) Identification of the planning area boundaries and characteristics, the existing needs related to water treatment, and the projected needs up to the next 20 years;
- (2) Cost-effective analysis of feasible water systems or conveyance alternatives capable of meeting state and federal requirements. The cost effective analysis shall detail all monetary costs including but not limited to the present worth or equivalent annual value of all capital costs and operation;
- (3) All information necessary for the design of the system;
- (4) A resolution passed by the applicant which provides a commitment to build the proposed project and a copy of the minutes of the open meeting in which the resolution was passed. For municipalities, a certified copy of appropriation articles or resolutions shall be required;
- (5) A statement of the most current estimate of project cost itemized as to major facilities or items including land and right-of-way costs, fees of engineers, all legal fees, fees of financial advisors and/or consultants, contingencies at 10 percent, and interest during construction at one percent; and
- (6) A statement of the legal, institutional, managerial and financial capacity to construct, operate, and maintain the water system.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 514.03 Financing. The applicant shall establish a user charge system which will generate sufficient revenues for the operation and maintenance, including reasonable replacement cost. The applicant shall establish a dedicated source or sources of revenue to repay the loan.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 514.04 Plans and Specifications.

(a) The applicant shall prepare and submit plans and specifications on all significant elements of the project to the department. These documents shall conform to the design standards specified in Env-Ws 370 and Env-Ws 372. A design approval shall be obtained from the department.

(b) The plans and specifications shall contain the following:

- (1) Provisions assuring compliance with department rules;

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- (2) Forms for the bid bond, statutory performance bond, and maintenance bond;
 - (3) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage;
 - (4) Provisions giving authorized representatives of the department access to all such construction activities, books, records, documents, and other evidence of the contractor for the purpose of inspection, audit, and copying during normal business hours;
 - (5) Those applicable conditions, specifications, and other provisions required to comply with state and federal law; and
 - (6) A bid proposal that separates eligible construction from ineligible construction.
- (c) The department shall approve the plans and specifications if the following criteria are met:
- (1) They conform to the requirements listed in (a), above of this section;
 - (2) They are consistent with all relevant statutes; and
 - (3) They are consistent with department-approved planning documents.
- (d) Approval of the plans and specifications shall not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.
- (e) The applicant shall obtain authorization from the department before advertising for bids on the project.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

PART Env-C 515 LOAN PROCEDURES

Env-C 515.01 Application.

- (a) Applicants for loans from the DWSRF shall submit applications to the department on forms provided by the department.
- (b) Application information and supporting documentation shall consist of the following:
- (1) Name and address of applicant;
 - (2) Brief project description;
 - (3) Estimated total project cost including cost support data;
 - (4) Estimated project construction period;
 - (5) Term of loan requested;
 - (6) Amount of loan requested;
 - (7) Estimated cash flow requirement;

- (8) Source of loan repayment funds;
 - (9) For infrastructure planning, design and construction loans, a planning document outlining need, alternatives evaluation, cost-effective analysis, both capital and operation and maintenance, and environmental assessment;
 - (10) For planning and design infrastructure project loans and for SWP project loans, a brief description of the project which explains the need;
 - (11) A resolution adopted by the public water system authorizing filing of the application, and indicating persons authorized to sign the application on behalf of the community, shall be certified and sealed by the town clerk;
 - (12) Evidence of approval through the N.H. intergovernmental review process as required by executive order 12372;
 - (13) A letter signed by the authorized representative certifying that the applicant has the financial capability to support both the project loan repayment and continuing operation and maintenance;
 - (14) Identification of all anticipated sources of funding for the proposed project;
 - (15) Evidence of approval of a governmental authority or other appropriate authority to raise, appropriate, and spend requested funds on the described project;
 - (16) Cash flow projection;
 - (17) Statement of the municipality or other appropriate authority designating a representative(s) authorized to sign the loan agreement;
 - (18) Evidence of compliance with applicable federal requirements;
 - (19) A letter signed by the authorized representative stating whether or not the applicant has any outstanding debt; and
 - (20) A copy of the applicant's latest annual report.
- (c) The department shall notify the applicant if the application is incomplete.
- (d) Failure to provide a complete application or provide required supporting documentation in accordance with Env-C 515.01, shall be grounds for denial of the application.
- (e) Upon review of the completed application, the department shall notify the applicant in writing of one the following:
- (1) Approval of the application; or
 - (2) Denial of the application based upon the following criteria:
 - a. The project does not address public health needs; or
 - b. The project does not comply with the SDWA.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 515.02 Original Loan Agreement.

(a) Following acceptance of the application and upon availability of funds, a loan agreement shall be executed between the state and the applicant on forms provided by department.

(b) The loan agreement shall contain the following information:

- (1) Estimated loan amount;
- (2) Interest rate schedule of loan;
- (3) Term of repayment;
- (4) Amount of administrative fee;
- (5) Legal evidence of guarantee of full faith and credit of the municipality for repayment of the loan to the DWSRF; and
- (6) Description of the project.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 515.03 Use of Funds. Loan recipients shall agree to and enter into contracts for use of funds and begin expenditures of funds within 6 months of execution of the loan agreement. Failure to comply shall cause the loan agreement to be declared null and void.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 515.04 Governor and Council Approval. The loan agreement shall be subject to approval by governor and council.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 515.05 Contracts.

(a) Contract documents shall be submitted for review and approval by the department. No construction project shall be offered for public bid until authorized to do so by the department.

(b) For all projects funded by the DWSRF program, whether for construction, planning, or design, a contract for professional services shall contain or be supported by the following information:

- (1) Services to be performed by the engineering consultant;
- (2) The loan recipient's responsibilities;

- (3) The estimated time of completion of the project;
- (4) Compensation to be paid to the engineering consultant;
- (5) Additional covenants including the name of the project engineer; and
- (6) Termination provisions.

(c) For all construction projects funded by the DWSRF program, and following receipt of bids and review and approval by the department, a construction contract shall be executed between the loan recipient and the supplier or contractor on forms provided by the engineering firm.

(d) The construction contract shall contain the following information:

- (1) Bidding requirements for the construction of the project;
- (2) Payment bond, performance bond, notice to proceed, and such forms as the contractor's affidavit, the contractor's release, the certificate of substantial completion, and change orders;
- (3) The conditions of the contract for the construction of the project;
- (4) Applicable federal provisions, regulations, and forms;
- (5) Project design specifications;
- (6) General and supplemental conditions; and
- (7) Appendices including boring logs, erosion and sedimentation control details, and other details as appropriate.

(e) The department shall review all bids for construction and shall approve the loan recipient's acceptance of the lowest competitive bid, plus a 5 percent contingency, and related engineering and administrative costs as indicated in Env-C 505.03.

(f) Any increases in project cost or scope shall not be permitted unless the prior approval of the department is obtained through a written request to the department explaining the extent of the increased costs and/or scope and reasons for the adjustments. Upon receipt of a request for approval of an increase in cost and/or scope, the department shall review the request.

(g) The department shall approve the request if the following criteria are met:

- (1) The increased cost or scope was not reasonably foreseeable at the time the original project proposal was submitted;
- (2) The cost increase results in a total cost no greater than the prevailing rate for the item to which the cost is attributable such as, but not limited to labor and materials;
- (3) The item to which the cost increase is attributable is an eligible cost as specified in Env-C 513; and
- (4) The fund has sufficient monies available at the time the request is filed to cover the proposed cost increase.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 515.06 Loan Disbursements. Disbursements shall be made by the state to loan recipients on a periodic basis as requested by the municipality for acceptable eligible work in place. Disbursements shall be made for eligible equipment delivered and properly stored on the job site. In order to request a disbursement for equipment delivered, paid invoices shall be presented by the contractor. Requests shall not be made more frequently than monthly.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 515.07 Loan Repayment.

(a) Loans shall be repaid to the department as stipulated in the loan contract, but not to exceed a 20 year repayment period. Repayments shall begin one year following the completion of the project but in no case later than one year following the scheduled project completion as stated in the loan agreement.

(b) Should excusable delay, as defined in Env-C 511.01(z), be incurred beyond scheduled completion, the commissioner, with the consent of the state treasurer, may modify the loan contract to account for the delays. Any modification of the loan contract shall be negotiated with and approved by the affected applicant prior to any formal modification of the loan contract.

(c) Loans may be repaid prior to the date stipulated in the loan agreement with no prepayment penalty.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

PART Env-C 516 LOAN INTEREST RATES

Env-C 516.01 Establishing Rates.

(a) Interest on any loan funds disbursed to the municipality shall begin to accrue on the date of each disbursement of such funds by the state.

(b) The interest rates charged on disbursed funds prior to project completion shall be equal to one percent per year.

(c) Interest charges incurred on disbursed funds may be paid semi-annually, prior to the commencement of the loan repayment, at the time of the first repayment, or added to the loan balance at the option of the recipient.

(d) Interest charges during loan repayment shall be fixed over the loan repayment period and shall be established at the time of the execution of the supplemental loan agreement based on the established 11 G.O. Bond Index published the first week of October and loan repayment period selected by the loan recipient. Loan interest charges during repayment shall be 25 percent of the established rate minus one percent when a 5 year repayment period is selected, 50 percent of the established market rate minus one percent when a 10 year repayment period is selected, 75 percent of the established market rate minus one percent when a 15 year repayment period is selected, and 80 percent of the established market rate, minus one percent, when a 20 year repayment period is selected.

(e) In addition to the interest charges established in (e) above, an annual administrative fee in the amount of one percent on the unpaid principal balance shall be charged on all outstanding loans during the loan repayment period.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 516.02 Adjustment. The interest rate stipulated in the original loan agreement shall be adjusted one time at the completion of the project prior to setting the final repayment schedule as outlined in the supplemental loan agreement. The rate shall be adjusted downward from the initial rate based on the established rate being charged on the execution date of the supplemental agreement. The loan interest rate shall not be adjusted upward from the rate stipulated in the original loan agreement.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 516.03 Assurances.

(a) Prior to receipt of loans for construction, applicants shall provide evidence of the following:

- (1) Approved project plans and specifications;
- (2) Agreement to develop a user charge system and water use ordinances prior to 80% of construction completion in accordance with 40 CFR Part 35;
- (3) Compliance with best available technology where applicable for primary and secondary contaminants;
- (4) Compliance with Minority Business Enterprise and Women's Business Enterprise Requirements, 40 CFR Part 31;
- (5) Agreement to maintain project financial accounts in accordance with generally accepted government accounting standards and to maintain these accounts as separate accounts;
- (6) A letter signed by the authorized representative certifying that the water system which will be implementing the project has the necessary, legal, financial, institutional, and managerial resources available to insure the construction, operation, and maintenance of the proposed water treatment facilities; and
- (7) Agreement to provide notice of initiation of operation to the department upon beginning operation of the project.

(b) For loans from the repayment fund, items (4) and (5), above shall be waived.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 516.04 Certification. The recipient shall certify in a letter to the department that any facility constructed from funds made available through the DWSRF meets design specifications and drinking water quality standards one year after the initiation of operation.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 516.05 Inspection. Loan recipients shall be required to contract for or otherwise provide for on site resident inspection of any construction. The extent of resident inspection shall be agreed upon by the applicant and the department and stipulated in the loan contract based upon the size and scope of the project. The recipient shall also make provision for periodic inspection by department personnel.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

PART Env-C 517 ENVIRONMENTAL REVIEW

Env-C 517.01 Environmental Review. Construction projects for which loans from the DWSRF are requested shall be reviewed for impacts on the human and natural environment in accordance with Env-C 517.02 through Env-C 517.06.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 517.02 General Procedure.

(a) The department of environmental services shall be the lead agency for coordinating the environmental review process and shall prepare or have a designated affiliate prepare an environmental review report based on the applicant's proposed project.

(b) The environmental review shall result in one of the following actions:

- (1) Categorical exclusion, (CE);
- (2) Finding of no significant impact, (FNSI); or
- (3) Requirement of an environmental impact statement, (EIS).

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 517.03 Details of Review.

(a) The department or its designee shall provide environmental project review and recommend one of the following determinations:

- (1) A categorical exclusion determination shall be made, based on the following:
 - a. Minor work on existing facilities as determined by the department, such as correction of leakage, replacement of pipes in existing rights of way, replacement or addition of equipment or small new structures on site;
 - b. Minor upgrading in small communities where new areas will be disturbed; or
 - c. Acquisition of land for SWP purposes; or

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(2) A FNSI shall be made, based on the following:

- a. Major work on existing facilities; or
- b. Major upgrades where new areas are involved.

(b) The department shall prepare a review document describing the basis for a CE determination which shall be forwarded to interested agencies, associations, and the public for review and comment in accordance with Env-C 517.05.

(c) At the close of the review and comment period a determination shall be made in accordance with the following:

- (1) If no significant adverse comments are received, a CE shall be issued by the commissioner as the final action and transmitted to the applicant; or
- (2) If significant adverse comments are received, the commissioner shall require the department or its designee to prepare an EA in accordance with Env-C 517.04.

(d) For projects not receiving a CE determination, the department or its designee shall prepare an EA in accordance with Env-C 517.04.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 517.04 Environmental Assessment.

(a) An EA shall contain the following information:

- (1) Project purpose and need;
- (2) Environmental concerns;
- (3) Recommended alternatives which may include a no action alternative;
- (4) Details of the recommended alternative; and
- (5) Mitigation measures required for the recommended alternative.

(b) The EA shall be forwarded to interested agencies, associations, and the public for review and comment in accordance with Env-C 517.05.

(c) At the close of the review and comment period a determination shall be made in accordance with the following:

- (1) If no significant adverse comments are received, a FNSI shall be issued by the commissioner as the final action and transmitted to the applicant; or
- (2) If significant adverse comments are received, the applicant shall convene a public information meeting in accordance with RSA 91-A.

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(d) Within 60 days of the public information meeting, the commissioner shall assess the comments and make one of the following determinations:

- (1) If the department finds either that the comments received do not indicate that the proposed project will actually have a significant adverse impact on the environment, or that the benefit to the environment conferred by the project as proposed outweighs any significant adverse impact caused by the project as proposed, the commissioner shall issue the FNSI with a cover letter explaining the decision;
- (2) If the department finds that the project will have a potentially significant adverse impact on the environment that could be lessened or eliminated by implementing an alternative proposal, the commissioner shall order the applicant to re-review the proposed project to identify an alternative with less environmental impact;
- (3) If the department finds that the project will have a significant adverse impact on the environment that could be lessened or eliminated by modifying the project as proposed to incorporate mitigating procedures, the commissioner shall require mitigating procedures to be implemented as a condition of receiving a loan from the SRF; or
- (4) If the department finds that the project will have a significant adverse impact on the environment that cannot be lessened or eliminated by implementing an alternative proposal or by incorporating mitigating procedures, the commissioner shall:
 - a. Direct the applicant to initiate an EIS in accordance with the National Environmental Policy Act (NEPA) and EPA procedures; and
 - b. Require the applicant to use a private consultant if the commissioner finds that the applicant does not possess the requisite technical resources to prepare the EIS without the aid of a private consultant.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 517.05 Review and Comment by Agencies, Associations and the Public. Following the environmental review, the recommended action by the department shall be reviewed and documented as follows:

(a) Agency involvement shall include other statewide agencies and associations as well as federal agencies as appropriate;

(b) The department shall maintain complete files and documentation of the environmental review process and public comments; and

(c) Public participation shall be in accordance with the following:

- (1) Public input shall be solicited by the applicant on all construction projects for which SRF loans are contemplated. At least one public meeting, in accordance with RSA 91-A, shall be required during the project planning period or prior to signing the original loan agreement;

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(2) The public shall be notified by the applicant and input solicited through advertisement in a local and statewide newspaper. Comments shall be submitted to the applicant or the department within 10 days from the date of publication; and

(3) No formal action shall be taken by the department during this public review period.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 517.06 Appeal

(a) Within 30 days of a decision by the commissioner to issue a CE or FNSI, any person aggrieved by the decision may file a petition for appeal with the council. Such petition shall be filed in accordance with the provisions of Env-Ws 200.

(b) If no petition for appeal is filed within the 30 day period specified, the commissioner's decision shall become final upon the expiration of that period.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

PART Env-C 518 CONSTRUCTION PHASE FOR INFRASTRUCTURE AND SWP RELATED CONSTRUCTION PROJECTS

Env-C 518.01 Awarding Construction Contracts.

(a) The recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding the construction contract. The text of the construction contract shall not vary from the text of the department approved draft contract documents in the approved plans and specifications or addendum to the plans and specifications.

(b) The applicant shall receive written approval from the department to award the construction contract based upon the provisions in (a) above.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 518.02 Inspection During Construction. During the building phase of the project, the recipient shall provide the engineering services necessary to assure completion of the project in accordance with the loan agreement and the approved plans and specifications.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 518.03 Resident Inspection.

(a) After the construction contract is awarded, the recipient shall provide for adequate resident inspection of the project and require assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and in accordance with sound engineering principles and building practices.

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(b) The department shall inspect the building of any project at any time in order to assure that the plans and specifications are being followed and that the works are being built in accordance with sound engineering principles and building practices.

(c) The department shall, to the extent practicable, bring to the attention of the recipient and the project engineer any variances from the approved plans and specifications. The recipient and the project engineer shall immediately initiate necessary action rectifying construction deficiencies.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 518.04 Inspection of Materials.

(a) The department shall inspect all materials furnished to ensure compliance with industry standards and approved plans. The state inspector shall report the manner and progress of the building or report conditions relating to the materials furnished. The state inspector shall also report on the contractor's compliance with the approved plans and specifications for the project. Such inspection shall not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents nor shall it release the project engineer from determining compliance with the requirements of the contract documents.

(b) In the event building procedures or materials are determined by the department to be substandard or otherwise unsatisfactory and/or not in conformity with approved plans and specifications, the department shall order the recipient to take action in the manner provided for in the construction contract to correct any such deficiency.

(c) In those instances of dispute between the recipient project engineer and the department's representative as to whether material furnished or work performed conforms with the terms of the construction contract, the recipient shall direct the project engineer to reject questionable materials and/or initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

(d) The contractor and recipient shall furnish the department's representative with every reasonable facility for ascertaining whether the work as performed is in accordance with the requirements and intent of the contract.

(e) In addition to normal testing procedures required of the recipient, the department shall require reasonable additional tests of building materials and of processes which the department determines to be necessary during the building of projects financed in whole or in part by DWSRF funds. All tests, whether for the department or the project engineer, shall conform to current American Water Works Association, as specified in Env-Ws 307, American Association of State Highway and Transportation Officials, from DOT American Society of Testing and Materials, and the New Hampshire department of transportation published procedures, or similar criteria. The department shall specify which tests are applicable. Samples for testing shall be furnished free of cost to the department upon request on the construction site.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 518.05 Project Changes.

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(a) Minor changes in project work that are consistent with the objectives of the project and within the scope of the assistance agreement do not require the approval of the department before the applicant's implementation of the change. However, the amount of funding provided by the assistance agreement may only be increased by a formal amendment in writing with the department, BFA, treasury, governor, and council approval.

(b) The recipient must receive approval from the department before implementing changes which do one of the following:

- (1) Alter the project performance standards;
- (2) Alter the type of water treatment provided by the project;
- (3) Significantly delay or accelerate the project schedule; or
- (4) Substantially alter the design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 518.06 Building Phase Submittal. During the building phase of the project, the following actions by the recipient shall be required:

(a) Notice of completion of construction shall be submitted to the department upon completion of project construction; and

(b) Any other building phase submittal actions required as part of the financial assistance documents shall be submitted for the department's approval.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

PART Env-C 519 IMPLEMENTATION PHASE REQUIREMENTS FOR NON-CONSTRUCTION SWP PROJECTS

Env-C 519.01 Awarding Contracts to Consultants. The recipient shall comply with every appropriate procedure and incidental legal requirement in awarding the consultant's contract.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 519.02 Implementation Phase Reporting Requirements. During the implementation phase of a SWP project a report of the progress achieved shall be submitted to the department quarterly.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

PART Env-C 520 PAYMENTS AND ACCOUNTING

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-C 520.01 Progress Payments. Disbursements from the loan fund established by the recipient will require approval by the department. Certified requests for payment and documentation shall be submitted to the department monthly. Upon approval, the department shall authorize the progress payments to be made from the fund.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 520.02 Retainage.

(a) Up to 10 percent of all partial payments made to the contractor may be withheld as retainage.

(b) At any time that the contractor has completed in excess of 85 percent of the total contract amount the retainage shall be reduced to 5 percent of the amount earned to date, if prior approval is obtained from the department.

(c) After completion of construction and acceptance by the applicant, the final release of retainage shall be made with approval of the project by the department.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 520.03 Accounting. The recipient shall:

(a) Maintain that project accounts in accordance with generally accepted governmental accounting standards;

(b) Secure a fund in the project account in the manner provided by law for the security of county funds or city funds, as appropriate;

(c) Place all proceeds acquired by the recipient to plan, design, and construct the project in the project account;

(d) Use all proceeds in the project account for the sole purpose of planning, designing, and building the project as approved by the institution and the department;

(e) Provide to the department an annual audit of the recipient, prepared by a certified public accountant or licensed public accountant;

(f) Maintain adequate insurance coverage on the project in an amount adequate to protect the state's interest;

(g) Comply with any special conditions specified by the department's environmental determination until all financial obligations to the state have been discharged; and

(h) Continually abide by the terms of the financial assistance agreement, the department's rules, and relevant state statutes for operation and maintenance of the facility.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

PART Env-C 521 MISCELLANEOUS PROVISIONS

Env-C 521.01 Inspection of Works, Books and Records. Projects shall be subject to the following requirements:

(a) From the time of first application for financial assistance for a project, throughout all stages of construction/implementation, and at any other time while any assistance from the department to the applicant is outstanding, the department shall have the right to inspect the project, and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which application is made;

(b) The department shall further have the same said right of inspection to inspect any and all books, accounts, records, contracts or other instruments, documents or information possessed by the applicant or its contractors, agents, employees or representatives which relate in any respect to the receipt, deposit, and/or expenditure of financial assistance funds; and

(c) After project completion, the department may conduct periodic site visits.

Source. #6620, INTERIM, eff 11-15-97, EXPIRES: 3-15-98;
ss by #6697, eff 2-25-98

Env-C 521.02 Project Modifications.

(a) After an application for financial assistance has been approved by the department, no change, modification, or amendments to, or departure from the approved plans and specifications which would materially or significantly affect total project or water project cost, estimated revenues, or design shall be made, allowed, or authorized without the prior written approval of the department.

(b) For purposes of this section, no prior departmental approval of project change orders shall be required if applicant's project engineer certifies to the department that such change, modification, amendment or departure otherwise will not materially or significantly affect total project or water project cost, estimated revenues or design.

Source. #6697, eff 2-25-98

Env-C 521.03 Public Records. All records of the department relating to the financial assistance program covered by the rules of this chapter shall be public records available for public inspection by any interested person during normal business hours.

Source. #6697, eff 2-25-98

Env-C 521.04 Project, Inspection and Audit.

(a) Upon completion of any project for which financial assistance has been provided, the applicant shall furnish to the department written notification of completion.

(b) Upon receipt of such notification, or upon project completion, should notification not be furnished as required herein, the department shall conduct a final on-site inspection of the project and an audit of any and all financial assistance funds furnished to the applicant.

Source. #6697, eff 2-25-98

Env-C 521.05 Return of Funds to the Department.

(a) Financial assistance funds made available to an applicant by the department shall be utilized and expended by the applicant solely and exclusively for the payment of authorized and allowable costs and expenses of the project for which assistance was approved.

(b) In the event funds furnished to an applicant by the department are not utilized and expended by the applicant for the specific project for which such funds were furnished within a reasonable period of time after disbursement to the applicant, or in the event the department determines, at any time, that funds furnished were utilized and expended for any unauthorized or unallowable purpose, the applicant shall return or otherwise pay to the department any and all such unused funds or any amounts of funds used and expended for unauthorized or unallowable purposes.

Source. #6697, eff 2-25-98

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APPENDIX

Rule Number	Specific statute which the rule is intended to implement
Env-C 503	RSA 486:14,I
Env-C 504	RSA 486:14,I and II
Env-C 505	RSA 486:14,I
Env-C 506	RSA 486:14,I and III
Env-C 507	RSA 486:14,I and III and 40 CFR Section 35.3115(b)
Env-C 508	RSA 486:14,I
Env-C 509	RSA 486:14,I